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P. MOHAN REDDY ETC.
v.
E.A.A. CHARLES AND ORS.

FEBRUARY, 16, 2001

B

[G.B. PATTANAIK, K.G. BALAKRISHNAN
AND B.N. AGRAWAL, JJ.]

Service Law :

C

Andhra Pradesh Revenue Subordinate Service Rules, 1961—Rule 4(e) inter-se seniority—Between direct recruits and promotees—Post of Deputy Tehsildar—Rule amended on 9.10.1980 given prospective effect—Rule amended on 23.9.1992—Applicability of—Held, seniority of the appointees, appointed between 9.10.1980 till September 1992 is required to be determined in accordance with pre-amended Rules which came into existence in September 1992—Andhra Pradesh State and Subordinate Service Rules—Rule 33.

D

Under Andhra Pradesh Revenue Subordinate Service Rules, 1961, appointments to the cadre of Deputy Tehsildar was required to be made by direct recruitment and by transfer from Andhra Pradesh Ministerial Services and the substantive vacancies in the cadre were to be filled by direct recruitment and recruitment by transfer in the proportion of 1 : 1.

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The Rule was amended on 09.10.1980 inserting Rule 4(e) giving it retrospective effect, which provided that the *inter-se* seniority between the direct recruit and promotees shall be determined from the date of their confirmation in the substantive vacancy in that category in the proportion of 1:1.

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The validity of the amended rule was challenged in the case of *K.V. Subbarao and Ors. v. Govt. of Andhra Pradesh & Ors.*, [1988] 2 SCC 201, wherein the court held that the amended rules could operate only prospectively and upholding the rule directed the State to compute the substantive vacancies in the cadre and to determine the quota of direct recruits and after working out the vacancies available to be filled up by direct recruits on the basis of 50 per cent, fill up the same by making direct recruitment; and to draw up seniority list on the basis of amended rule. Seniority lists were prepared.

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Applications were filed before central Administrative Tribunal, alleging that the lists were not prepared in accordance with the judgement of the court. On 24.09.1992 the Rules were further amended by limiting the direct recruits to 30 per cent of approved substantive vacancies and further providing that notwithstanding Rule 4(e), the criteria for seniority of a person appointed as Deputy Tehsildar shall be continuous service and not confirmation by following the ratio of vacancies 1:1. The amendment to the rules was effective prospectively and those whose services were to be regularised prior to the date of amendment, their services would be governed by pre-amended position and conformations had to be made w.e.f. the date of available vacancy of approved probationers in the order of seniority. The direct recruit Deputy Tehsildars appointed prior to the amendment were entitled to have their seniority fixed in accordance with rule 4 (e) as it stood then.

Promotee Tehsildars approached the Tribunal praying for re-drawing their seniority as per the criteria given under the amended rules dated 24.09.1992. The Tribunal dismissed the application holding that the seniority shall be decided in accordance with Rule 4(e), since the amendment brought about on 24.09.1992 had not been given retrospective effect and was prospective in nature. Promotees filed appeal in High Court, which set aside the judgement of the Tribunal holding that the seniority had to be drawn up in accordance with the amended rules on the basis of total length of service without reference to the date of confirmation and without reference to Rule 4(e).

In appeal to this court appellants/ direct recruits contended that the seniority of Deputy Tehsildars appointed between 09.10.1980 and 23.09.1992 had to be determined in accordance with Rule 4(e), as it stood then and the same could not be altered by applying the principles evolved in the amended rules of September 1992; and that an employee, though may not have a vested right to a specific position in the gradation list of a cadre, yet he had the right to get his seniority determined in accordance with the rules in force on the date of his appointment and unsettling that right by subsequent amendment of rules would be a great dis-service to the entire cadre, and therefore cannot be sustained. The respondents contended that the rules brought about in September 1992, even if they were not retrospective in operation but they were retrospective in nature, therefore the seniority of the existing Deputy Tehsildars in the cadre had to be determined in accordance with the amended criteria; and that in view of positive direction given in *Subbarao's* case it is not permissible for the High Court to side track the direction given by

A adopting a principle that the seniority has to be redrawn up in accordance with the amended criteria.

Allowing the appeal, the Court

B HELD: 1. Seniority of Deputy Tehsildars appointed between the dates 10.04.1980 till September 1992 is required to be determined in accordance with pre-amended Rules which came into existence in September 1992, and even if, factually such seniority has not been drawn up then the same has to be drawn up in accordance with the criteria indicated in the pre-amended Rule and not according to the amended Rules, which came into existence in September 1992. [1083-H; 1084-A]

C 2. Even though an employee cannot claim to have a vested right to have a particular position in any grade, but all the same he has the right of his seniority being determined in accordance with the Rules which remained in force at the time when he was borne in the Cadre. The question of re-determination of the seniority in the cadre on the basis of any amended criteria or Rules would arise only when the amendment in question is given a retrospective effect. If the retrospectivity of Rule is assailed by any person then the Court would be entitled to examine the same and decide the matter in accordance with law. If the retrospectivity of the Rule is ultimately struck down, necessarily the question of re-drawing of the seniority list under the amended provisions would not arise; however if the retrospective is upheld by a Court then the seniority could be re-drawn up in accordance with the amended provisions of the employees who are still in the cadre and not those who have already got promotion to some other cadre by that date. Further a particular Rule of seniority having been considered by Court and some directions in relation thereto having been given, that direction has to be followed in the matter of drawing up of the seniority list until and unless a valid Rule by the Rule Making Authority comes into existence and requires otherwise. If any Rule or Administrative Instruction mandate drawing up of seniority list or determination of inter-se seniority within any specified period then the same must be adhered to unless any valid reason is indicated for non-compliance of the same. [1083-C-G]

K.V. Subbarao and Ors. v. Government of Andhra Pradesh and Ors., [1988] 2 SCC 201, explained.

H *Wing Commander J. Kumar v. Union of India*, [1982] 2 SCC 116; *Union of India & Ors. v. Dhanvanti Devi & Ors.*, [1996] 6 SCC 44; *Union of India*

& Ors v. *M. Ravi Verma and Ors. Etc.*, [1972] 2 SCR 992; *Mervyn Coutindo & Ors. v. Collector of Customs & Ors.*, [1966] 3 SCR 600; *D.P. Sharma & Ors. v. Union of India & Anr.*, [1989] Suppl. 1 SCC 244; *B.S. Yadav & Ors, Etc. v. State of Haryana & Ors. Etc.*, [1981] 1 SCR 1024; *P.D. Aggarwal & Ors. v. State of U.P. & Ors.*, [1987] 3 SCC 622; *Gaya Baksh Yadav Etc. v. Union of India & Ors.*, [1996] 4 SCC 23; *Indian Administrative Service Association v. Union of India*, [1993] Suppl. 1 SCC 730; *Prem Kumar Verma & Anr. v. Union of India & Ors.*, [1998] 5 SCC 457; *State of Jammu & Kashmir v. Shri Triloknath Khosa and Ors.*, [1974] 1 SCC 19; *P.S. Mahal and Ors. Union of India and Ors.*, [1984] 4 SCC 545 and *A.K. Subraman v. Union of India*, [1975] 1 SCC 319, referred to.

S.S. Bola & Ors. v. B.D. Sardana & Ors., [1997] 8 SCC 522 and *R.S. Makashi and Ors. v. I.M. Menon and Ors.*, [1982] 1 SCC 379, distinguished.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 3056 of 1998.

From the Judgment and Order dated 31.12.97 of the Andhra Pradesh High Court in W.P. No. 20294 of 1997.

WITH

Civil Appeal Nos. 3055 and 3054 of 1998.

P.P. Rao, L. Nageshwar Rao, H.S. Gururaja Rao, D.A. Dave, P.N. Mishra, J.R. Manohar Rao, Jayanth Muthraj, D. Mahesh Babu, T.V. Ratnam, M. Surendar Rao, R. Santhana Krishnan, Dr. Sunil Kumar, K. Ram Kumar, Y.S. Rao, B. Sridhar and K. Krishna Reddy-in-person for Respondent No. 27 in C.A. No. 3054/98.

T. Anil Kumar, P. Venkata Reddy and Ms. Madhurima Tatia for the appearing parties.

The Judgment of the Court was delivered by

PATTANAİK, J. *Inter se* seniority in the cadre of Deputy Tehsildars between direct recruits and promotees is the subject matter of dispute in these appeals. When the matter had been listed before a two Judge Bench, it was felt that there is some conflict between the two decisions of the Court, one in the case of *Wing Commander J. Kumar v Union of India*, [1982] 2 Supreme Court Cases 116, and the decision in *K.V. Subbarao and others v. Government*

- A of *Andhra Pradesh and others*, [1988] 2 Supreme Court Cases 201, for which the cases were referred to a three Judge Bench. The appellants are directly recruited Deputy Tehsildars and their service conditions are governed by Andhra Pradesh Revenue Subordinate Service Rules, 1961 (hereinafter referred to as 'The Special Rules'). Under the Special Rules appointment to the cadre of Deputy Tehsildars could be made either by direct recruitment or by transfer
- B from member of Andhra Pradesh Ministerial service employed in the Revenue Department including the office of the Commissioner of Land Revenue, Revenue Settlement and office of the Director of Settlements, Survey and Land Records. It also further provides that substantive vacancies in the cadre would be filled up by direct recruitment and recruitment by transfer in the proportion of 1:1.
- C The aforesaid Special Rule was amended on 9.10.1980 inserting Rule 4(e) and giving it retrospective effect with effect from the promulgation of Rules on 12.10.1961. The amended Rule 4(e) provided that the inter se seniority between the direct recruits to the category of Deputy Tehsildars and the promotees to the category of Deputy Tehsildars shall be determined from the date of their confirmation in the substantive vacancy in that category in the proportion of 1:1, as provided in sub-rule (b) of Rule 3. The validity of the aforesaid amended Rule was the subject matter of challenge in this Court in the case of *K.V. Subba Rao and others v. Government of Andhra Pradesh and others*, (supra). This Court came to hold that the amended Rules can operate only prospectively from 9th October 1980 and shall not have any retrospective effect. A further direction was given that the State shall within 4 months from the date of the judgement would compute the substantive vacancies in the cadre and determine the quota of direct recruits to the rank of Deputy Tehsildars and after working out of the vacancies available to be filled up by direct recruits on the basis of 50 per cent of the total number, fill up the same by making direct recruitment within a period of 4 months thereafter. The State
- F Government was further directed to draw up a seniority list on the basis of Rule 4(e) on or before 31st December, 1988. Pursuant to the aforesaid direction seniority list were prepared but alleging that list have not been prepared strictly in accordance with the judgement of this Court, Original Applications were filed before the Andhra Pradesh Administrative Tribunal. On 24.9.1992
- G Special Rules of 1961 were further amended by limiting the direct recruits to 30 per cent of approved substantive vacancies and further providing that notwithstanding Rule 4(e), the seniority of a person appointed as Deputy Tehsildar shall be governed by General Rule 33 in Part II of Andhra Pradesh State and Subordinate Service Rules, according to which continuous service and not confirmation by following the ratio of vacancies 1:1 between the direct recruits and promotees would be the criteria. The Commissioner of Land
- H

Revenue issued instructions that the aforesaid amendment to the Rules being effective from 24.9.1992, persons whose services are to be regularised prior to the same date, their services would be governed by the preamended position and confirmation has to be made with effect from the date of available vacancy of approved probationers in the order of seniority. The State Government also issued a Clarificatory Order on 14.8.1995 stating therein that direct recruited Deputy Tehsildars appointed prior to 24.9.1992 are entitled to have their seniority fixed in accordance with Rule 4(e), as it stood then. The promotee Tehsildars, however, approached the Tribunal and prayed for a direction that the seniority list be re-drawn up as per the criteria under the amended Rules dated 24.9.1992, of all those who continue in the cadre and who have not been promoted to any higher post and necessarily therefore, persons appointed as Deputy Tehsildars between the period 9.10.1980 and 23.9.1992, their seniority has to be determined on the basis of remanded Rules. A reference has been made to the Secretary, Law Department for his opinion who also had opined that all those appointed between 9.10.1980 and 23.9.1992 their seniority will be governed by Rule 4(e), as it stood prior to its amendment and not by the new Rule which came into force on 24.9.1992. The Tribunal dismissed the applications filed by the promotees with the direction that seniority of the persons directly appointed as Deputy Tehsildars between 9.10.1980 and 23.9.1992 be drawn up in accordance with Rule 4(e) since the amendment brought about in September 1992 has not been given any retrospective effect, and on the other hand is prospective in nature. Against the order of dismissal by the Administrative Tribunal the promotees approached the High Court and the High Court having set aside the judgement of the Tribunal and having held that the seniority has to be re-drawn up in accordance with the amended Rules on the basis of total length of service without reference to the date of confirmation and without reference to Rule 4(e), which had been inserted by the amendment of 9th October, 1980, the present Appeals by grant of Special Leave have been filed by the direct recruits.

Mr. P.P. Rao. Learned senior counsel appearing for the appellants contended, that an employee on being appointed to the service is entitled to get his seniority determined on the basis of the Rules that exits on the date of his appointment. And that being the position, in respect of Deputy Tehsildars appointed between 9.10.1980 and 23.9.1992 the seniority has to be determined in accordance with Rule 4(e), as it stood then and the same cannot be altered by applying the principles involved in the amendment Rules of September 1992. Mr. Rao further contended that the seniority determined in a cadre need not be altered over and over again on the basis of Rules being

A amended from time to time unless and until the amended Rules are given retrospective effect by the Rule making Authority. The learned counsel also urged that an employee, though may not have a vested right to a specific position in the gradation list of a cadre, yet he has the right to get his seniority determined in accordance with the Rules in force on the date of his appointment and unsettling that right by subsequent amendment of Rules

B would be a great disservice to the entire cadre, and therefore cannot be sustained. Mr. Rao further submitted that since Rule 4 of Andhra Pradesh Subordinate Service Rules contemplates and provides preparation of approved lists every year, by mere inaction on the part of those who were employed to prepare the list and then by virtue of amendment to the Rules later the

C rights of appellants to get their seniority determined in accordance with Rule 4(e), as it existed prior to amendment of 1992, cannot be taken away. According to Mr. Rao the High Court in the impugned judgement committed serious error in following the ratio in the decision of this Court in Haryana case in *SS Bola & Ors. v. B.D. Sardana & Ors.*, [1997] 8 Supreme Court Cases 522, without

D noticing the fact that in the State of Haryana the legislature had intervened in framing the law and giving it retrospective effect, but in the case in hand, the amended Rules of 1992 not being retrospective in nature the question of re-determining the seniority in the cadre in accordance with the new set of Rules does not arise.

E Mr. Dushyant Dave, learned senior counsel appearing for the promotee—respondents on the other hand contended, that the seniority of a government servant being conditions of service and the power to frame Rule for determination of seniority in such service, being vested with the Government, there is no bar for the State Government to amend the Rules as and when required, even by changing the criteria for determination of the seniority in

F question. The learned counsel urged that the Rules brought about in September 1992, even if is not retrospective in operation but it is undoubtedly retroactive in nature, it necessarily follows therefore that the seniority of the existing Deputy Tehsildars in the cadre will have to be determined in accordance with the amended criteria and the only prohibition is that those who were already

G promoted to a higher cadre, question of re-determining their seniority would not arise. This being the position, the High Court was fully justified in directing a re-drawal of seniority list of Deputy Tehsildars in the cadre irrespective of the fact whether they are appointed between 1980 to 23.9.1992 or appointed subsequent to the Rule came into force. Mr. Dave also further urged that if an employee has no right to claim a particular position in the

H seniority list and Rule making Authority having the power to regulate the

service conditions of the employee alters the criteria for determining the seniority, on drawing up of the seniority list in accordance with the amended provision may entail a change of position in the gradation list, and such change of position not having taken away any vested right of the employee no grievance can be made on that score. Mr. Dave contends that the principle that seniority could be re-determined in accordance with the Rules, as and when Rules get amended has been upheld by this Court in the case of *Wing Commander J. Kumar*, (supra) and re-affirmed by this Court in *Bola's* case (supra) and, therefore, no infirmity should be found with the impugned judgment of the High Court. A B

Mr. Gururaja Rao, learned senior counsel appearing for respondent nos. 28 to 33 in Civil Appeal No. 3054 of 1998, submitted that though these respondents were in fact came to be appointed subsequent to the amended Rules but in fact they had been appointed pursuant to the earlier judgment and, as such, they must be deemed to have been appointed earlier than the amended Rules came into force and consequently their seniority also is required to be drawn up in accordance with the pre-amended provisions of law. C D

Mr. Ram Kumar, learned counsel appearing for some of the respondents in Civil Appeal No. 3054 of 1998 supported the contention of Mr. Rao and urged that the amendment to the Rules which has been made prospectively cannot be given any retrospective effect indirectly, as has been done by the High Court in the case in hand, and as such the impugned judgment is vitiated. He further contended that in view of positive direction given by this Court in *Subba Rao's* case (supra) it would not be permissible for the High Court to side track the direction given by adopting a principle that the seniority has to be re-drawn up in accordance with the amended criteria. According to Mr. Ram Kumar the ratio of *Wing Commander J. Kumar's* case is only to the effect that statutory Rule would prevail over the Administrative Order and any other observation made therein cannot have the effect of the binding precedent which cannot be held to be a decision of a Court. In support of his contention he places reliance on the decision of this Court in *Union of India & ors. v. Dhanwanti Devi & ors.*, [1996] 6 Supreme Court Cases 44. Mr. Ram Kumar also further contended that principle for determination of inter seniority between the direct recruits Deputy Tehsildars and promotee Deputy Tehsildars between the period 1980 to 1992 having been decided by this Court in *Subba Rao's* case (supra) rights flowing from that judgment cannot be taken away when the Rule making Authority E F G H

A themselves have not made the amendment retrospective in nature. Mr. Nageshwar Rao, learned counsel appearing for the direct recruits also contended that it was never the intention of the Law making Authority to govern the seniority of earlier appointees by the new Rules. He also urged that Rule 4 of the subordinates Services Rules having enjoined an obligation for being complied with every year, simply because that has not been done, the seniority is not required to be re-determined in accordance with new Rules.

In view of the rival submissions the first question that arises for consideration is that what was the nature of dispute and the relief that was granted by this Court in *Subba Rao's* case (supra)? In the aforesaid case the relevant Rule for determination of inter seniority between direct recruits and the promotees under the very Rule, namely, Andhra Pradesh Revenue Subordinate Services Rules, 1961, was under consideration. Rule 4(e) thereof had been amended on 9th October, 1980 stipulating that the seniority shall be determined from the date of their confirmation in the substantive vacancy in that category in the proportion of 1:1, as provided in sub rule (b) of Rule 3. The Rule making Authority also made the aforesaid amendment retrospective with effect from 12th October, 1961. This Court ultimately upheld the validity of the Rule but struck down only the retrospectivity part. The Court further directed the State Government to draw up seniority list on the basis of Rule 4(e), namely, on the basis of the date of confirmation in the proportion of 1:1. The effect of the aforesaid decision is that the State was called upon to compute the substantive vacancies in the cadre and determine the quota for direct recruits in the rank of Deputy Tehsildars and after working out the vacancies available, to be filled up by direct recruitment on the basis of 50 per cent of total number, fill up the same and then draw up the seniority list on the basis of Rule 4(e). Normally, therefore, but for the amendment brought about to the Rule in the year 1992, the seniority in the cadre of Deputy Tehsildars between the direct recruits and promotees between the period 9th October 1980 and 24th September, 1992 is required to be drawn up in accordance with the aforesaid judgment of this Court. In fact the Commissioner of Land Revenue had issued such instructions and the Administrative Tribunal also dismissed the application filed by the promotees. In the aforesaid case the effect of the direction of this Court further was, so far as the Deputy Tehsildars recruited prior to 9.10.1990, their seniority was not required to be re-determined under the amended Rules of 1980. In other words the same was to be determined by virtue of the General Rules. It is interesting to notice that notwithstanding the positive direction of this Court in *Subba Rao's* case (supra), in fact no

seniority list had been prepared between the period 1980 till 1992. Thus there has been a gross dereliction on the part of the authorities who were required to draw a seniority list in the light of the directions given by this Court in *Subba Rao's* case (supra). A

Let us now examine different authorities cited at the Bar in respect of their respective contentions. In the case of *Union of India & Ors. v. M. Ravi Varma and Ors. Etc.*, [1972] 2 Supreme Court Reports 992, on which Mr. Rao relied upon, the question for consideration was as to how the seniority appointed prior to December 22, 1959 will have to be determined. Referring to Office Memorandum dated 22nd June, 1949 under which the seniority was required to be determined on the basis of length of service the Court held that the appointees prior to the Office Memorandum dated 22nd December, 1959 would get their seniority determined according to the earlier Office Memorandum of 22nd June, 1949 i.e., in accordance with the Rules in force when the appointment had been made. In this case the Court relied upon the earlier decision in *Mervyn Coutindo & Ors. v. Collector of Customs & Ors.*, [1966] 3 Supreme Court Rules 600, and this decision, to a great extent supports Mr. Rao's contention. In *D.P. Sharma & Others v. Union of India and another*, [1989] Supp. 1 Supreme Court Cases 224, it has been held by this Court that it is the General Rule that if seniority is to be regulated in a particular manner in a given period, then the same shall be given effect to and not be varied to disadvantage retrospectively. In this case also the earlier criteria for determination of seniority was length of continuous service whereas the subsequent Rules provided for determining the seniority on the basis of the date of confirmation. This Court held that the subsequent Rules cannot impair the existing rights of officials who were appointed long prior to coming into force of the Rules. Those officials had right of determination of their seniority in accordance with the pre-existing memoranda which provided for reckoning length of continuous service. This decision also undoubtedly, supports Mr. Rao's contention and further holds that an employee has an existing right of getting his seniority determined in the cadre according to the Rules in force on the date of his appointment. B C D E F

In the Constitution Bench decision of this Court in *B.S. Yadav & Ors. etc. v. State of Haryana & Ors. etc.*, [1981] 1 Supreme Court Reports 1024, the Court was considering a case of drawing up of seniority list of judicial officers and then finally directed the High Court to re-draw *inter se* seniority list of those direct recruits and promotees who were appointed to the Superior Judicial Service prior to 31st December 1976 on the basis of the respective G H

- A dates of their confirmation allotted to them and of all those who were appointed to the post in service after 31st December, 1976 in accordance with the amended Rule 12. It may be stated that amended Rule 12 was notified on 31st December, 1976 which lays down the length of continuous service in a cadre post as a guiding criteria for fixing seniority, whereas under the Rules prior to that date the guiding factor for determination of seniority in the cadre was
- B on the basis of the date of confirmation allotted to the employees. The aforesaid Constitution Bench decision, therefore indirectly supports the contention of Mr. Rao that the seniority of an employee in a cadre is required to be determined in accordance with the Rules in force on the date of appointment and not under any amended Rules unless the amended Rules
- C itself are retrospective in nature.

- In *P.D. Aggarwal & Ors. v. State of U.P. & Ors.*, [1987] 3 Supreme Court Cases 622, certain temporary Assistant Engineers had been appointed in consultation with the Union Public Service Commission and had been rendering service since 1956. The Rules for seniority was Rule 23 of the U. P. Service
- D of Engineers (Building and Roads Branch) Class II Rules. That Rule stood amended in the year 1971. This Court held that on the basis of the provision of Rule 23 it was before the amendment made in 1971, the temporary Assistant Engineers are legally entitled to have their seniority reckoned from the date of their being members of the service, no matter whether they are holding
- E posts which remained as temporary for years together. The Court repelled the contention of the direct recruits Assistant Engineers that they being recruits under amended Rule 23 of 1971 Rules, they cannot be deprived of their right to be promoted on the basis of fixation of their seniority in the cadre, as provided in the amended Rules. The Court further observed that substituted
- F Rule 23 introduced in 1971 is on the face of it unreasonable and arbitrary inasmuch as it purports to deprive a member of service from having his seniority reckoned on ipse dixit Rules that he had not been appointed in the substantive vacancy.

- In *Gaya Baksh Yadav etc. v. Union of India & Ors.*, [1996] 4 Supreme Court Cases 23, the question of inter se seniority between direct recruits and
- G promotees Customs Appraisers during the period preceding and succeeding the Rules of 1961 was under consideration. In that also the Statutory Rules governing the subject of seniority came into force in the year 1961 called the Customs Appraisers Service Class II Recruitment Rules 1961, and prior to coming into force of the aforesaid Recruitment Rules the seniority of such
- H customs appraisers in the cadre was being determined in accordance with

Administrative Instructions from time to time and in *Mervyn Coutindo* (supra) this Court discarded the quota system for promotion. This Court ultimately held that appraisers appointed prior to the decision of this Court in *Mervyn Coutindo* (supra) would get their seniority on the basis of quota rota formula, Whereas appraisers appointed on and from the Recruitment Rules came into force, would get their seniority determined on the basis of continuous officiation as indicated in the Recruitment Rules.

In *Indian Administrative Service Association v. Union of India*, [1993] Suppl. 1 Supreme Court Cases 730, the question of determination of seniority in the All India Service was under consideration. In that case this Court had observed while interest to seniority can be acquired under relevant rules, there is no vested right to seniority or promotion. The real question for consideration in that case was whether a particular statute can be said to have retrospective effect when the language plainly does not indicate the same. This decision is really not directly on the point in the present case, particularly when it is conceded that the Rules of 1992 is prospective in nature.

In *Prem Kumar Verma and another v. Union of India and others*, [1998] 5 Supreme Court Cases 457, to which one of us (*Pattanaik, J.*) was the party, on considering paragraph 303 of the Railway Establishment Manual, which was the provision for determining the seniority of candidates recruited through Railways Service Commission, the Court held that the post which fell vacant prior to July 1989 and the persons were selected prior to the amendment made on 5.5.1990 the seniority of those recruits will have to be determined on the basis of pre-amended paragraph 303, whereas those who were recruited subsequent to 5th May, 1990, their seniority would be determined according to the amended criteria. A conspectus of the aforesaid decision, therefore, unequivocally indicate that the seniority of an employee in the cadre is required to be determined in accordance with the Rules in force unless the subsequent amendment is expressly given the retrospective effect, and even though an employee does not have a vested right to have any particular position in the gradation list, but it does possess a right to get his seniority determined in accordance with the Rules in force when he was recruited and that right should not be interfered with unless the Rule making Authority by virtue of amending the Rules make it applicable to all the existing employees in the cadre notwithstanding the fact that their seniority had already been determined under the pre-existing Rule.

Mr. Dave, learned senior counsel appearing for the contesting respondents strongly relied upon the Constitution Bench decision of the

A Court in *State of Jammu & Kashmir v. Shri Triloki Nath Khosa and Others*, [1974] 1 Supreme Court Cases 19. In this case the power of the employer to change the conditions of service retrospectively was under consideration and this Court in that context had observed that the Government can alter the terms and conditions of its employees unilaterally and though in modern times consensus in matters relating to public services are often attempted to be achieved, consent is not a pre-condition of the validity of Rules of service, the contractual origin of the services notwithstanding. Though the question of seniority was not a matter for consideration but Mr. Dave, appearing for the respondents relied upon the observations of the Court in paragraph 16, wherein this Court had observed:

C “It is wrong to characterise the operation of a service rule as retrospective for the reason that it applies to existing employees. A rule which classifies such employees for promotional purposes, undoubtedly operate on those who entered service before the framing of the rule but it operates in future, in the sense that it governs the future right of promotion of those who are already in service. The impugned Rules do not recall a promotion already made or reduce a pay scale already granted. They provide for a classification by prescribing a qualitative standard, the measure of that standard being educational attainment. Whether a classification founded on such a consideration suffers from a discriminatory vice is another matter which we will presently consider but surely, the Rule cannot first be assumed to be retrospective and then be struck down for the reason that it violates the guarantee of equal opportunity by extending its arms over the past. If rules governing conditions of service cannot ever operate to the prejudice of those who are already in service, the age of superannuation should have remained immutable and schemes of compulsory retirement in public interests ought to have foundered on the rock of retroactivity. But such is not the implication of Service Rules nor is it their true description to say that because they affect existing employees they are retrospective.”

G The aforesaid decision is obviously not a direct decision on the point that has arisen for consideration in the present case though indirectly the observations referred to may have some relevance. *Wing Commander J. Kumar's* case (supra) is undoubtedly a direct case on the point in issue and seniority was the subject matter for consideration. In that case also the H seniority of the employees under the Defence Research and Development

Organisation was being determined in accordance with a set of Memorandum A
 issued by the Ministry of Defence dated 18th March, 1967. In November 1979
 the President of India promulgated in exercise of power under proviso to
 Article 309 of the Constitution a set of Rules, called 'R & D Organisation
 Terms and Conditions of Service Rules. The appointees, prior to the said
 Rules came into force had contended, that their seniority cannot be affected B
 by the new Rules and that has to be determined in accordance with the
 Memorandum of 18th March, 1967. This Court, however, did not accept the
 said contention on the ground that the Statutory Rules having been
 promulgated by the President of India under the proviso to Article 309 of the
 Constitution an employee cannot claim to have acquire the right to have his
 seniority in the Research & Development Organisation reckoned with reference C
 to the date of his temporary secondment. The Court also had further observed
 that it is a settled law that service conditions pertaining to seniority are liable
 to alteration by subsequent changes that may be introduced in the Rules and
 except to the extent of protecting promotions that have already been earned
 under the previous Rules, the revised rules will operate to govern the
 seniority and future promotion prospects of all the persons in the concerned D
 service. The aforesaid observation undoubtedly supports Mr. Dave's
 contention. But it may be noticed that the Statutory Rule in Rule 16 had used
 the expression "hitherto" and the Court considered the aforesaid expression
 in the Statutory Rule to be the factual background leading to the enactment,
 particularly when the employee did not bring to the notice any clinching E
 material for justifying any departure from the accepted principles in Statutory
 Rule. That apart, the principles under a set of administrative instructions was
 being substituted by a set of Statutory Rule and that Statutory Rule also itself
 gave certain indication as to how in the past seniority of officer was being
 reckoned, namely, on the basis of attainment of substantive rank of major/
 Sqdrn., Leader/Lt. Commander. The Court further observed that when a F
 Statutory Rule governing seniority is issued in respect of a service the said
 rule would govern the personnel in the service with effect from the date of
 its promulgation and in so giving effect to the Rule in future, there is no
 element of retroactivity involved. This observation supports Mr. Dave's
 contention to a great extent. But in the teeth of the series of authorities we G
 have discussed earlier, we are not persuaded to accept the reasoning in this
 decision for coming to the conclusion that the seniority of the employees has
 to be re-determined over and over again as and when the criteria changes.

In the case of *R.S. Makashi and others v. I.M. Menon and others*, [1982]
 1 Supreme Court Cases 379 a question of determination of seniority in a cadre, H

A of the personnel drawn from different sources and merging into a single newly formed organisation was under consideration. The relevant Rules protected the pre-existing seniority and preserved maintenance of the same and this was challenged to be arbitrary and unreasonable. The Court considered the circumstances under which the people from different sources have been drawn and are drafted to serve on deputation and consequently it was held

B that it is a just and wholesome principle commonly applied in such situation that their inter se seniority in parent department should be respected and preserved so long as continue in the department and the relevant rule in that respect cannot be held to be violative of Articles 14 and 16. The aforesaid decision, therefore, is in relation to the fact situation of that case and does

C not help either of the rival stand of the parties in the present case.

It would be appropriate to notice a Three Judge Bench decision of this Court in *S.S. Bola*, (supra). It is this judgment on which the High Court heavily relied upon. In that case the question of seniority between direct recruits and promotees had been decided by the Supreme Court adopting a particular principle and the seniority list had been drawn up. But the Haryana Legislature enacted an Act governing the conditions of service of the employees and that Act had been given retrospective effect and the legislative intervention became necessary as the entire seniority position became topsy-turvy to such an extent that a direct recruit Assistant Executive Engineer, who was not even borne on the cadre when a promotee had been appointed as a Deputy Engineer became senior to the said promotee. It is because of the retrospectivity of the Act the seniority was required to be re-drawn up in accordance with the Act, the validity of the Act having been upheld. The principles decided in *SS Bola's* case (supra), by this Court will have no application to the present case since, admittedly, the amended provisions which came into force in September 1992, is not retrospective in nature. The High Court, therefore, was not justified in drawing its conclusion on the basis of the aforesaid judgment in *Bola's* case (supra). At this juncture, we may notice yet another judgment of this Court in *P.S. Mahal and others v. Union of India and Others*, [1984] 4 Supreme Court Cases 545. It is in this case the Supreme Court by its judgment dated 11th December, 1974 had indicated that in the absence of any Statutory Rules governing the inter se seniority of the Executive Engineers promoted from two sources, the seniority inter se should be determined on a General Principle indicated in the Memorandum dated 22nd June, 1949 on the basis of length of continuous officiation in the grade. The Rule making Authority then came forward with a set of Recruitment Rules in exercise of power under proviso to Article 309 and gave it retrospective

effect from a date prior to the judgment of the Supreme Court, referred to earlier. When the seniority list was re-determined on the basis of the Statutory Recruitment Rules this Court held, that since by the earlier judgment it has been held that the inter se seniority of Executive Engineers promoted from the grades of Assistant Engineers upto December 11, 1974 would be governed by the Rule of length of continuous officiation, that direction and decision cannot be set at not by the subsequent Recruitment Rules coming into force and giving the same retrospective effect. The Court, therefore, directed that in respect of the appointees prior to the promulgation of the Recruitment Rules the seniority has to be determined on the basis of the decision in *A.K. Subraman v. Union of India*, [1975] 1 Supreme Court Cases 319.

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A conspectus of the aforesaid decisions of this Court would indicate that even though an employee cannot claim to have a vested right to have a particular position in any grade, but all the same he has the right of his seniority being determined in accordance with the Rules which remained in force at the time when he was borne in the cadre. The question of re-determination of the seniority in the cadre on the basis of any amended criteria or Rules would arise only when the amendment in question is given a retrospective effect. If the retrospectivity of the Rule is assailed by any person then the Court would be entitled to examine the same and decide the matter in accordance with the law. If the retrospectivity of the Rule is ultimately struck down, necessarily the question of re-drawing of the seniority list under the amended provisions would not arise, but if however, the retrospectivity is up held by a Court then the seniority could be re-drawn up in accordance with the amended provisions of the employees who are still in the cadre and not those who have already got promotion to some other cadre by that date. Further a particular Rule of seniority having been considered by Court and some directions in relation thereto having been given, that direction has to be followed in the matter of drawing up of the seniority list until and unless a valid Rule by the Rule Making Authority comes into existence and requires otherwise, as was done in *Bola's case* (supra). It may be further stated that if any Rule or Administrative Instruction mandate drawing up of seniority list or determination of inter se seniority within any specified period then the same must be adhered to unless any valid reason is indicated for non-compliance of the same.

When we examine the present case from the aforesaid principles we have no doubt in our mind, that in view of the judgment of this Court in *Subba Rao's case* (supra) seniority of Deputy Tehsildars appointed between

- A the dates 10.4.1980 till September 1992 is required to be determined in accordance with pre-amended Rules which came into existence in September 1992, and even if, factually such seniority has not been drawn up then the same has to be drawn up in accordance with the criteria indicated in the pre-amended Rule and not according to the amended Rules, which came into existence in September 1992, as has been held by the High Court in the impugned judgment. The High Court therefore, was clearly in error and the said judgment of the High Court is thus set aside. The Tribunal was fully justified in dismissing the O.As. filed by the promotee Deputy Tehsildars. In the premises, as aforesaid, the Civil Appeals by the direct recruits are allowed and the O.As. filed by the promotees before the Administrative Tribunal stand dismissed.
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- The contention of Mr. Gururaja Rao, appearing for respondent Nos. 28 to 33 in Civil Appeal No. 3054 of 1998 that they should be treated to have been appointed earlier than the rules came into force, cannot be taken into consideration in these appeals since that was not the bone of contention in the Courts below and at any rate, it has no relevance to the lis between the direct recruits and the promotees Deputy Tehsildars, on the question of determination of their inter se seniority in the cadre.
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K.K.T.

Appeal allowed.